

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

SHANE L. CANNON,

CASE NO.: 15-30451-KKS

CHAPTER: 7

Debtor.

ORDER OVERRULING, WITHOUT PREJUDICE, ROBERT GIGLIO'S
OBJECTION TO AND MOTION TO DETERMINE SUFFICIENCY OF
CLAIM NO. 2 (DOC. 74)

THIS MATTER is before the Court on *Robert Giglio's Objection to and Motion to Determine Sufficiency of Claim No. 2* (the "Objection," Doc. 74) and the response in opposition filed by claimant, Beach Community Bank ("BCB") (the "Response," Doc. 83). For the reasons set forth, the Objection is due to be overruled, without prejudice.

BCB has filed six (6) proofs of claim; the Objection is directed to Claim 2. The basis for Claim 2 is a pre-petition judgment entered in state court in favor of BCB against the Debtor and two non-debtors (Claim 2-1, p. 5). The Objection alleges that Claim 2 should be disallowed because in 2016 BCB filed a "Notice of Voluntary Dismissal with Prejudice of Entire Action" in the state court case from which the judgment arose, and recorded a "Satisfaction of Judgment," which, on their face, released all

defendants to the state court action, including the Debtor. The Debtor has filed a similar objection.¹ BCB does not deny filing and recording these documents, but claims that they released Debtor only due to a “scrivener’s error” and is seeking leave to attempt to revise or amend these documents.²

At a hearing on the Objection (and on Debtor’s objection) held on April 26, 2017, the Court requested briefing on the threshold issue of standing to object to BCB’s claim. Based on that briefing, the Court determines that the Objection is premature; Mr. Giglio does not currently have standing to object to claims.

Section 502(a) of the Bankruptcy Code provides that a claim or interest is deemed allowed unless a party in interest objects.³ In a Chapter 7 case, the Chapter 7 Trustee is usually the proper party to review and object to claims.⁴ The term “party in interest” is not defined by the code, but it is typically one who has a pecuniary interest in the estate being administered.⁵ Mr. Giglio is not a creditor in this bankruptcy case.⁶ His

¹ Debtor’s *Objection to Claim* (Doc. 77).

² *Beach Community Bank’s Motion for Relief from the Automatic Stay* (Doc. 78).

³ 11 U.S.C. § 502(a).

⁴ *In re Mohr*, 538 B.R. 882, 885 (Bankr. N.D. Ga. 2015).

⁵ *In re Charter Co.*, 68 B.R. 225, 227 (Bankr. M.D. Fla. 1986).

⁶ Mr. Giglio filed a claim on February 2, 2017, but withdrew it on February 9, 2017 (Claim No. 7).

only involvement in the Debtor's bankruptcy case is in his capacity as a defendant in an adversary proceeding.⁷ Mr. Giglio has indicated that he intends to file a proof of claim if the Court rules in favor of the Trustee and BCB on the matter that was tried in the pending adversary proceedings.⁸ Only then will Mr. Giglio *potentially* have standing to prosecute an objection to claim.

Even if Mr. Giglio had standing currently, it is premature to consider objections to claims because the Trustee has not collected any assets for distribution to creditors. The purpose of objecting to claims is to determine which filed claims will be allowed for purposes of distribution of assets collected by the Trustee.⁹ To date, the Trustee has collected \$0 and has identified only one potential asset: approximately \$60,000.00 being held pursuant to a pre-petition garnishment on a bank account in the name of a third party corporation, SLC Investments, Inc. ("SLC").¹⁰ This money is the subject of a pending adversary proceeding in which Mr.

⁷ Adv. No.: 16-03015-KKS.

⁸ *Creditor [sic] Robert Giglio's Response to Beach Community Bank's Memorandum of Law in Support of its Opposition to Shane L. Cannon and Robert Giglio's Objection to Claim No. 2* (Doc. 102).

⁹ *See In re Bailey*, 2010 WL 4702354 at *3 (Bankr. N.D. Ga. Nov. 17, 2010); 4 *Collier on Bankruptcy* ¶ 502.02[2][a] (Alan N. Resnick & Henry J. Somer, eds., 16th ed.2009).

¹⁰ Doc. 61.

Giglio is a named defendant and claims this money is his.¹¹ If the Trustee prevails in his adversary proceeding, then this \$60,000 will come into the instant bankruptcy estate. If the Trustee is unsuccessful, the \$60,000 will not become part of this estate, but rather will remain the property of SLC, subject to the garnishment and subject to Mr. Giglio's claim of ownership. In that event, there will be nothing for the Trustee to distribute to creditors. If there is nothing to distribute to creditors, there is no reason to take up valuable judicial and attorney time and effort determining objections to claims, because no parties who filed claims, including BCB, will receive any distribution from this estate.¹²

At such time as there is money to distribute to creditors, then Mr. Giglio may have standing to pursue an objection to Claim 2. Until then, it is

ORDERED:

1. The Objection (Doc. 74) is **OVERRULED**, without prejudice.

¹¹ Adv. No.: 16-03015-KKS.

¹² *Kipp Flores Architects, L.L.C. v. Mid-Continent Casualty Co.*, 852 F.3d 405, 412-413 (5th Cir. 2017); *In re Holland*, 2015 WL 4600382 at *2 (Bankr. S.D. Ga. July 30, 2015); *In re Shapiro*, 188 B.R. 140, 148 (Bankr. E.D. Pa. 1995).

2. The continued hearing on the Objection scheduled for June 6, 2017 is CANCELED.

DONE and ORDERED on June 5, 2017.

A handwritten signature in black ink, appearing to read 'K. Specie', written over a horizontal line.

KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

cc: all parties in interest

Attorney Robert Rushing is directed to serve a copy of this document on all parties and file a certificate of service within three (3) days of this Order.